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Case No: HQ15X04757

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London
WC2A 2LL

Date: Monday, 13th November, 2017

Before:

SIR ALISTAIR MACDUFF
(sitting as a Judge of the High Court)

- -

Between:

GILLINGHAM FOOTBALL CLUB	**Claimant**
- and -	
CENTERPLATE UK LIMITED	**Defendant**
(formerly LINDLEY CATERING LIMITED)	

- -
- -

MR. TOM HICKMAN (instructed by **SA Law LLP**) for the **Claimant**

MR. ROGER STEWART Q.C. and MR. RICHARD LIDDELL (instructed by **Taylor Wessing LLP**) for the **Defendant**

- -

Approved Judgment

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
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SIR ALISTAIR MACDUFF:

1. This is a claim for damages for the admitted breach of a contract dated 26th September 2012. Liability is admitted. I am concerned only with quantification of damages.

2. Briefly, and in summary to begin with, the defendant had contracted to provide a catering service for Gillingham Football Club at their Priestfield Stadium. The service was provided in two or possibly three parts. First, there were the kiosks or tea bars spread around the ground selling the standard football fare: Bovril and tea – although in some clubs Oxo rather than Bovril – and that sort of thing. There was also a bar and nightclub facility called The Blues Rock Café, which was later re-branded and renamed The Factory. Thirdly, there were the banqueting facilities and so on, comprising a large space and a restaurant which could provide food on match days. Within this category were hospitality meals, boxes – executive boxes, I imagine – and on non-match days, there was the facility to cater for conferences, events, weddings and functions of that sort.

3. Continuing with the broad summary, the defendant undoubtedly found this to be an onerous contract, a contract under which they determined they were unable to make a profit, and they walked out mid-season. In fact, they repudiated the contract on 14th March 2015. It is appropriate for me to say at this stage – effectively in parentheses – that the behaviour of the defendant was wholly unprofessional and something of which it should be ashamed. Mr. Stewart has urged me otherwise, but I am entirely satisfied that the defendant indulged in bullying, blackmail (a word introduced into this case by me) and the breaking of undertakings. I will seek to make good this charge later in the judgment, albeit it has a relatively modest impact on the quantum of damages.

4. The defendant had reckoned without Mr. Paul Scally, in many ways the admirable Chairman of Gillingham Football Club. Mr. Scally has been the target of criticism from the defendant, both during the currency of the contract and following the issuing of proceedings and deep into this trial. For the most part, that criticism does not bear examination. There has been a suggestion from the defendant that Mr. Scally was not acting bona fide, but the truth is that the mala fides was on the other side. I will return to this later.

5. I need briefly to recount the history. The defendant, which was then a catering company known as Lindley, had tendered for a contract with Gillingham FC in 2011 following the departure of the previous caterers. It may be worth noting (again in parentheses) that they had had a bad experience with the previous caterers. We can see from the documentation that there had been a large fall-off in turnover over the last two years of the previous contract.

6. On 10th June 2011, Lindley and Gillingham Football Club entered into what has been called "the first contract". It is to be found in bundle 1, pages 154-186A. It is not necessary for me to consider that contract within this judgment. That first contract was superseded by the relevant contract, that is to say, the contract of 26th September 2012. It is to be found within the same bundle at pages 188 onwards. It had the same basic scheme as the previous contract, that is to say, the structure (or scheme) of the contract was that the caterer should pay to Gillingham a substantial one-off payment –

an upfront fee – followed by a percentage, year on year, of net sales subject to minimum guaranteed revenue. I refer to that as "MGR".

7. There were various schedules attached to the contract including a forecast of turnover and a forecast of growth. We will need to look at the forecasts in some detail and I will be doing that later in this judgment. The forecast within the contract served two purposes. First, it did what it said; it forecast what the targets or forecasts were for revenue over succeeding years. However, it was more than that because if it was achieved, it would have consequences, including triggering additional payments to Gillingham Football Club. If the forecast was not met, the minimum guaranteed revenue payment fell due. It was a large payment and it had turned out to be over-optimistic. Lindley fell well short of those forecasts and, in the first year, had made a very significant loss. They sought to renegotiate the contract successfully. Thus, the 2012 contract was entered into.

8. At this point, I can mention a very useful graph which has been provided to me, but which is not, I think, to be found in the bundles. It is headed *"Graph on turnover v forecast 02/11/17"*. Clearly, it was prepared at, or near, the beginning of this trial. It shows that the previous contractors were Compass. Their turnover declined between 2007 and 2011 quite dramatically from £1.7 million to £880,000. I mentioned that there had been a huge drop. It may be noted (again in parentheses) that the turnover of £1.7 million was the highest turnover recorded in the period from 2007 to date.

9. Lindley took over in 2011. They had forecast, under the 2011 contract, a turnover of £2.3 million. That was wholly over-optimistic because, at the same time, they managed to achieve a turnover starting at £904,000, dropping in 2013 to £877,000, rising a fraction to £1 million in 2014, and then dropping away to about £750,000 at, or about, the time they quit. Since then Gillingham Football Club have taken the catering back in-house and they have gradually, from 2015 to the present date, built up the turnover from £750,000 to just over £1 million. They are projecting further increases over the next several years.

10. Also included on that graph are the forecasts that Lindley had made. At the time of the renegotiated 2012 relevant contract, they were forecasting a turnover of £1.3 million (as opposed to the £2.3 million that they had forecast in the first contract). Thereafter, over the ensuing years, they were forecasting a substantial increase, year on year, so that by 2021, they were aiming to turn over £2.5 million.

11. In late 2013 or perhaps early 2014 – I am not entirely sure of the date – Lindley was acquired by the current defendant, Centerplate Limited. It is of some interest that Centerplate, on taking over, re-jigged that forecast hugely. That forecast is also shown in the darker blue on the same graph. Now, the forecast was a gradual increase from £850,000, current at that time, rising to just over £1 million by 2020, a far cry indeed from what had been forecast just a year earlier. I pause to note that the term of the contract was to 2021 so Centerplate were tied in with these terms to that time.

12. The contract had been entered into by Mr. Paul Scally, the Chairman, on behalf of Gillingham, and Mr. Adam Elliott, who negotiated on behalf of Lindley. When Centerplate took over, a gentleman by the name of Adrian Dishington (a witness in this case) became responsible at the Centerplate end. It is perhaps unnecessary to go into the detail of the contract, but at the risk of repetition, there was a substantial

upfront fee and the guaranteed minimum revenue originally had been £350,000 in 2011, payable on a monthly basis. I repeat that there was a large loss and there was a renegotiation. Why do I repeat that? It is only so I can mention that Gillingham Football Club took what could be described as a "big hit" when they renegotiated. The sum can be calculated, but Gillingham, instead of sticking to the original terms, as it was entitled to do, renegotiated and lost money as a result.

13. The new contract was also signed by Mr. Scally and Mr. Elliott before Centerplate came on the scene. Again there was an upfront concession fee and profit share: the main difference in the renegotiated contract was the reduction in the minimum guaranteed revenue payments and the reduced forecasts. There were terms as to when payments would be made and, again, the percentage of net sales, subject to the minimum guaranteed revenue. Of relevance later in this judgment, the contract provided for obligations upon each party. The caterers had defined obligations as did the club. The contract term would expire on 31st May 2021; it also had annexed to it, as had the contract of the previous year, the forecasts. These are the 2012 forecasts and I need to refer to them at this stage as they assume some importance in the case. They are to be found between pages 216 and 219 in the same bundle.

14. Looking at that document, one can see that the document describes itself. Forecast sales were placed into seven categories: retail; match day hospitality; at cost events; conference and banqueting; and Blues Rock Café, both match day and non-match day. Sales were forecast within those categories giving a total sales forecast for each year. That moved forward, year on year, over the nine years to 2021. The total sales forecast for the whole period would amount to £18.7 million. Sales growth was forecast at the percentages shown along the line immediately beneath "Total sales". There was large anticipated sales growth in the first years, decreasing and remaining fairly stable. There is then a gross profit calculation made in the usual way, again over the same categories, broadly speaking. Labour costs are in the next section and other costs in the further section, calculated largely on a percentage basis.

15. That was the structure. However, the mathematics in the 2012 forecast, as I have been informed, were wrong. Although the document is of a broad interest in its original state, there is a corrected version, which is to be found in bundle 1, pages 219F-G. That document corrects the mathematical errors. It is of some significance, in its new form, because the corrected figures down the right-hand side bear a closer correlation to the performance which is being achieved now, in-house, by Gillingham Football Club, than the figures did on the original mathematically incorrect forecast.

16. This document has no detailed relevance to the calculations that I am going to have to perform later in this judgment. It does, however, have this relevance: it stands as a form of benchmark. It enables me to do that which Mr. Stewart invited me to do, namely, to stand back and take what he called "a reality check". This document will enable me to do that when I perform the functions (which again Mr. Stewart reminded me I have to do) of directing myself and acting as a jury would have acted in the olden days. So, I can look at the benchmark of expectation.

17. I move forward to 2013 and 2014 when Centerplate had taken over. In the spring of 2014, Mr. Dishington took over the running of this contract on behalf of his employers. He was what one might call their trouble-shooter, a man of whom, as I will presently explain, I formed a poor view, albeit that what I make of Mr.

Dishington has but a small impact on the damages I am to award. From this point onwards, Centerplate was looking again to "renegotiate" the terms of the contract. In fact "renegotiate" is a euphemism. What it means is that they were intent on getting Gillingham Football Club to agree to take another large hit or, if that did not work, to get out of the contract either at no cost to themselves or at minimum cost.

18. It was not in any way accepted by the defendant that its behaviour was abominable, but it was. On 14th March 2015, the defendant did what may only be described as a moonlight flit, albeit that it was done during the hours of daylight. The disclosed documents are very revealing, including that on the day that Centerplate exited the stadium, there was a recognition that they were repudiating the contract and that they would likely be sued. Those involved at management level were well aware that they were doing wrong. Internal emails made reference to the police being around. There may even have been consideration as to whether they were acting criminally. It would be difficult to imagine a worse way to terminate a contract, in the middle of the football season, with clients due to attend on the following Saturday or the Saturday after, with bookings and so on, short of some worse act of vandalism on the way out.

19. It is true and fair to say that, for some little time, they had been telling Gillingham Football Club that they were going to exit come hell or high water (my words) at the end of the season, but they had given an undertaking to stay to the end of the football season, an undertaking which they broke. Mr. Dishington's attempts to justify the breaking of that undertaking were, I am afraid, wholly unpersuasive. Internal emails have been seen by me. Words such as, *"It was a tough day but we got away with it*" and, *"Thank you for your efforts and for not being arrested"* were express acknowledgements that they were in breach. These were the words of thieves in the night, not of supposedly respectable business men and women.

20. The next phase in the operation was that the defendant made press releases. Again, it is not accepted that they were misleading by the defendant, but I am satisfied that they were. Excerpts from the press releases are to be found within Mr. Scally's witness statement in bundle 2, pages 263-264. Paragraph 93 of that witness statement states as follows:

> "CP issued press releases (which did not accurately reflect the true position) in line with the documents which were forwarded to Adrian on 15 March 2016. 'Highlights' from the press clippings include:
>
> "(a) Adrian saying that:
>
> '*Centerplate values highly its partnership with all its clients both in the UK and around the world. Our efforts over the last year to discuss terms with the management of Gillingham FC, to craft a sustainable future partnership have proven unsuccessful. The existing terms of a contract that was signed prior to Centerplate's acquisition of the Lindley Group, and – despite our every effort – the lack of open dialogue with the club's management, have resulted in a situation in which the quality of service for the club's supporters and guests and the level of investment required cannot be sustained*.'

> "(b) Adrian saying that '*every effort*' was made to ensure the contract was sustainable before the decision was taken to make an early exist from the contract.
>
> "(c) A Centerplate spokeswoman confirmed in a press release (from 18 March 2015) that,
>
> '*following attempts to reach a sustainable future arrangement, Centerplate, the match day and event catering services company, announced on Monday that it has ended its commercial partnership with Gillingham FC with immediate effect …..*
>
> *….. It has not taken this decision lightly or abruptly. Centerplate has been in discussion with the club for approaching a year in an on-going attempt to reach a workable and amicable solution, and Centerplate made clear at a meeting in September that it was unviable to continue operating the contract under the current terms, at which point the club stated that it would source an alternative catering provider.*
>
> *At a crucial meeting on March 5, at which Gillingham FC's chairman failed to attend or make himself available by phone, Centerplate put forward a further proposal and stated the company would continue to provide catering service at the stadium until the end of this season on the proviso that all parties continued to negotiate in good faith. Despite repeated attempts to engage with the club and its lawyers over the intervening 12 days, Centerplate received no response or counter-offer to its proposal and deemed that discussions have, therefore, been brought to a conclusion leaving no alternative other than to withdraw from the contract.'*
>
> (d) Adrian saying that,
>
> '*Our efforts over the last year to discuss terms with the management of Gillingham FC to craft a sustainable future partnership have proven unsuccessful.*
>
> It added the: *'lack of open dialogue with the club's management'* had *'resulted in a situation in which the quality of service for the club's supporters and guests and the level of investment required cannot be sustained.'* "

21. Mr. Scally says that is factually correct in so far as it sets out the contents of the press releases and I find, as he has claimed within that paragraph, that those press releases were misleading and deliberately so.

22. The next phase was this. The defendant denied liability from the outset. They continued to play what I might call "hard ball". They turned the tables and they alleged that it was Gillingham Football Club which had been in repudiatory breach of contract. Earlier in this judgment, I said that I was satisfied that they had been engaged in bullying, blackmailing and breaking undertakings and I promised to seek

to make good this charge later in the judgment and I do so now. I can do it by referring to the evidence of Mr. Dishington.

23. He was shown a letter from Centerplate, to be found in bundle 3, tab 6, page 648. It is a letter from Centerplate to Mr. Scally dated 3rd July 2014. It can be read as to its first two pages, but the third page, that is to say, page 650 within the bundle, says this:

> "You have alleged that Centerplate owes the Club almost £240,000. We assume that you have calculated this as follows."

They then set out their calculation.

> "However, the £31,249.90 amount is no longer due."

There are then various other comments.

> "Hence, the balance currently due to the Club is £101,706.31."

So here was the rehearsal of a dispute: Gillingham wanted £240,000 at that stage and Centerplate wanted to pay a mere £101,000. Centerplate accepted that they owed £101,000 and that it was payable and payable now.

24. Any bona fide company, in those circumstances, would have paid the £101,000 saying, "We acknowledge that we owe you this. We are going to have to resolve the other dispute later. We say we are right for the following reasons". But no, what did Centerplate say? They said this at 651:

> "In summary, Centerplate considers that £101,706.31 is currently due to the Club. We will be able to transfer this to you immediately provided that we receive a formal acknowledgement from the Club that the contra, as outlined in paragraph 2 above, is agreed. I attach at Exhibit A hereto a draft letter for you to acknowledge this."

What does that say? It says, "We are only going to pay you this £101,000 if you agree to drop the whole of the rest of your disputed claim." Mr. Dishington, in evidence, had things to say about this. I need not go to the transcript. I told him, the judge intervening, that what he had said was not good enough and was blackmail (my word), was it not? He agreed, using the words, *"That is what it looked like."*

25. There was something even worse to follow. It is at page 1790. It is an email from Mr. Dishington to one of his colleagues. It says this:

> "Follow up emails have come from the team Lawyers in regards to us withholding our £100K payment to them due on June 1st" [now over one month overdue, I interpolate]. "It sounds like they are now willing to discuss the monies due to us to use as a contra on this money we owe. We currently owe him more than he owes us, but it's clear we are starting to get to him and we feel with continued pressure like this, it will eventually result in him asking us to leave or be ready to accept a reasonable offer to leave this contract. As you imagine the relationship is extremely poor and will be even more poor as we plan to reduce additional headcount at this facility."

It speaks for itself.

26. I make no apology for referring to a part of the evidence, the cross-examination of Mr. Dishington, starting at page 310 of the daily transcript:

> "(MR. HICKMAN): Mr. Dishington, when you say 'we are starting to get to him', you are talking about Mr. Scally, are you not? (A) Yes. (Q) And you are talking about the financial pressure that you are putting him under, are you not? (A) That is how it reads, yes. (Q) 'Continued pressure like this'. What other pressures were you putting Gillingham under, or did you intend to put Gillingham under? (A) There was no plans to intend to put Gillingham under any pressure. …."

That was plainly wrong.

> "This goes back to our first meeting with Mr. Scally, because this is after that where he basically advised me that we had to fulfil the contract to the letter. He knew that we were financially struggling on this piece of business and so we adopted these approaches to hopefully get an intelligent conversation across the table so we could start making some business sense.
>
> "(SIR ALISTAIR MACDUFF): That is not an intelligent conversation. Come on, I am not buying that. This is you putting pressure on him to agree to give you lots of money, is it not?" [In fact, I used the word "dosh"]. "That is what it comes down to? It is saying, we owe you lots and lots of money. We are going to have to owe you even more unless we can turn this operation round, which we have decided we are not going to. We want to get out of this as cheaply as we can and the way we are going to do it is by this form of blackmail",[again, my word]. "It is not a question of him talking to you intelligently, it is a question of him saying you are under contract here. It is as simple as that, is it not? (A) Yes."

27. Then at bundle 3, pages 704-705, there is a letter from Centerplate's American lawyer. It is not necessary for me to read it. It is there within the bundle to be seen. Mr. Scally responded by a letter of 10th September 2014. That is at bundle 3, page 707. In that letter, he said the following:

> "To any reasonable person, the tone and style of your correspondence and the issues raised, linked with the conduct and actions of some of your management over the past four months could suggest that your Company is seeking ways of exiting the catering contract you signed with the football club in June 2011. Is this the case?"

28. Mr. Dishington accepted in evidence that this was yet another example of unwarranted pressure being put on Mr. Scally. This prompted a response from the Chief Legal and (unclear) Officer at Centerplate, residing in Stamford, United States, in which he said this [page reference not given]:

> *"Paul should be advised to tread lightly when he is criticising me to my employer otherwise I will make certain that he has to return to the UK to answer claims for defamation. So Paul is absolutely clear his juvenile and unprofessional behaviour will be held unaccountable if it continues."*

29. I interpolate that that was more entirely unjustified bullying. Mr. Dishington agreed that he had not witnessed any juvenile or unprofessional behaviour. Finally, before I leave this dreadful part of the case, I would like to refer to Mr. Dishington's evidence at bundle 2, page 306, paragraphs 3.1-3.3:

> "I appreciate that to the uninformed observer, Centerplate's decision to exist the Agreement, as discussed through this statement, would appear to have been ruthless and to have unreasonably left Gillingham in the lurch."

I am now an informed observer and I hold that it was unreasonable and it did leave them in the lurch.

> "Although the decision to stop providing services without agreeing terms with Gillingham was unfortunate, and I am ***now*** (my emphasis) aware also constituted a repudiatory breach of contract, the truth is that ….."
>
> and then he goes on to make statements to attempt to justify it.

30. It was not "unfortunate" It was disgraceful. He was not ***now*** aware; he knew at the time that it was a repudiatory breach of contract. Mr. Scally was doing no more than requiring Centerplate to fulfil its contract obligations. In the next paragraph, he says,

> "Never in my professional career have I been involved in a situation such as this one, where one contracting party was so difficult and unconciliatory that in the end we felt that we had no real choice but to take decisive action."

His difficult and unconciliatory attitude was no more than saying, "I want you to fulfil your contract." It appears to me as though Mr. Dishington is used to having his bullying tactics succeed. I can add this. Towards the end of this contract, before they walked out, they were doing the bare minimum including, as already presaged in that earlier email, reducing staff and service levels and then walking out taking as much with them as they could manage.

31. That is enough of the history. I now have to turn to determine quantum. Before I come to the detail, let me summarise the position. Gillingham made attempts to find other caterers before deciding to take the operation in-house. I have been told that across the Football League, approximately 50% of football clubs employ caterers and the remaining 50% do the job in-house. We have firm evidence as to how the catering business of the club has gone since March 2015 almost to date. We have the actual figures. We also have projections and evidence of future performance from now until 2021, the end of the term. This is based upon a document to which I have not yet referred, but which is a hugely important document in the case. It is known as

the 2017 September Forecast. It is the principal piece of evidence on which I have to judge performance and to incorporate this material into my assessment.

32. There are two parts to my task. First of all, I have to consider whether the claimant has properly and reasonably mitigated its loss. Depending upon my findings there, I have to determine how to assess the damages to date and how to treat the future from now until 2021. The reality check which I can take incorporates that which I have already said about the graph, which accurately sets out the various different forecasts plus the various different achievements in terms of turnover. As Mr. Stewart reminded me, of more interest than the top line (that is to say, turnover) is the bottom line (that is to say, profit). I can use that graph as well as the 2012 forecast to stand as benchmarks to enable me to take an overview or, as Mr. Stewart put it, a reality check.

33. The 2017 September Forecast has been made from the source documents to date and will need to be put, in due course, alongside the model which the defendant alleges the claimant should reasonably have achieved. It is not just a 2017 forecast; it is also, if one likes, effectively now the pleaded case on damages. I remind myself at this stage that it is of real interest that when Centerplate came on the scene, they downgraded their forecasts so that, on their forecasts at that time, turnover would only rise over a period of five or six years from £850,000 to £1.02 million. Again, that is part of the reality check.

34. Before developing this, I need to say something about bundle 7. I am going to say it briefly, I hope, and I am dealing with it now for no good reason except that it needs to be got out of the way. There was between the parties some acrimony, which spread over into the proceedings. Indeed, during the course of this hearing, there have been disagreements between counsel and I have had to make some rulings as I have moved along. There were a number of interlocutory hearings before Slade J, Elizabeth Laing J and Haddon-Cave J.

35. A number of issues were rehearsed in those hearings. One of the things was that the defendant had sent a Trojan horse into Priestfield, a witness who was intending to give evidence of what he had seen on a number of clandestine visits, the purpose being to see how professional or unprofessional Gillingham were in their in-house catering. For reasons which she expressed, not least that it was coming from a so-called expert for whom permission had not been given, Elizabeth Laing J refused that evidence and ordered that where other witnesses (principally the experts, for whom permission had been given) had purported to act or report on his findings, that part of their evidence should be redacted. Needless to say, there was a dispute between the parties about those redactions and whether something should or should not be redacted as arising out of the "evidence" that had been disallowed.

36. In the event, they colour-coded the various statements, which had different status: agreed, not agreed, disputed, and so on. That was part of the interlocutory process, but there had also been an application to amend the pleadings by the defendant as recently as 16th October of this year. The Defendant filed a Re-Re-Amended Defence and Counterclaim. I pause at this stage to note that the main issue which I am going to have to determine later in the judgment is whether the claimant had failed adequately and reasonably to mitigate its loss. It was the defendant's primary case – and remained the defendant's primary case – that Gillingham should have appointed a

new caterer: I pause to note on almost any terms. Their secondary case was that if the catering stayed in-house, the defendant should have done a lot better.

37. The pleaded case at this stage appeared not to cover what I can call perhaps "an ongoing allegation", that is to say, although Centerplate pleaded firmly that at, or around, or just after the repudiation, Gillingham should have appointed a caterer (their primary case). But they also wished to allege that this was an ongoing situation, that is to say, that thereafter, having taken it in-house and looking at their results, Gillingham should have mitigated their loss by appointing a caterer later, or on the next day, or on the next day, and so on, right the way through. It is still their case that today Gillingham should appoint a caterer rather than continue in-house. This ongoing allegation, as I have called it, was not pleaded.

38. There was an order by the judge that Gillingham be allowed to make an amendment, but the terms of that amendment were defined. The defendant had leave to amend, but if there was any dispute as to whether the amendments fell within the scope of the leave granted, the defendant had to make an application. When this case began almost two weeks ago, the first thing I saw was an application for the defendant, which was held over for the trial judge, dealing with those two points; the redactions and the amendment. I had rather taken the view before coming into court that this was something that I should deal with at the very outset and that it was going to take much longer than the time estimated. However, the parties were agreed that we should leave it over for now, I should hear the whole case, I should make my decision as I went along, I could look at the redactions de bene esse and continue from there.

39. I have looked at the documents de bene esse and my views about them will become known, at least in part, from the decisions I am about to make. As to the amendment, it seems to me preferable that the defendant should be allowed to run the case that it wants to run and I should, if I am able, deal with it on its merits. I am allowing the amendments and I am going to deal with the evidence in the way that I have mentioned. I am allowing that amendment partly because it is not going to avail the defendant. I have considered it very carefully, but as will become apparent later in this judgment, I am going to decline to hold that it was unreasonable on the part of the claimant to take the catering back in-house, either at the time or at any later time. I emphasise that is not necessarily my decision on their secondary case of a failure to mitigate: an allegation that, if they kept the catering in-house they should have done better; in effect "upping their game" and achieving better results.

40. So I can return to the issue of damages. Principally, the issue is one of mitigation and the primary case is whether caterers should have been appointed. Before approaching that issue, I should remind myself, and direct myself, as to the law on mitigation of damages. It is admirably set out in Mr. Stewart's opening at paragraph 5. At 5.2, there is a summary of the recently-decided case of *Thai Airways v Ki* [2015] EWHC 1250. I do not propose to set it out in my judgment, but I can take paragraph 5.2 of Mr. Stewart's opening without reading it, although I do note the fifth principle at (e):

> "The claimant is free to act as it wishes following a breach of contract and does not owe any duty in law to mitigate its loss. Mitigation is thus not a duty but an assumption: damages are calculated on the assumption that the claimant has taken reasonable steps in mitigation whether it has in fact done so or not."

I take that on the chin, but I do not apologise for the fact that I may refer to the plaintiff's "duty" to mitigate. However, I do appreciate the nice difference. Over the years, one has talked of the plaintiff's duty although I accept it is not a duty strictly so-called.

41. I also wish to refer to words from Lord Macmillan in *Banco de Portugal v Waterlow and Sons Ltd* [1932] A.C. 452:

> "Where the sufferer of a breach of contract finds himself in consequence of that breach placed in a position of embarrassment the measures which he may begin to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty. It is often easy after an emergency has passed to criticize the steps which have been taken to meet it but such criticism does not come well from those who have themselves created the emergency. The law is satisfied if the party placed in a difficult situation by reason of the breach of duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken. "

42. The same sentiment is raised by Lord Loreburn, the Lord Chancellor, in *Lodge Holes Colliery Company v Wednesbury Corporation* [1908] A.C. 323.

> "It would be intolerable if persons so situated [that is to say claimants] could be called to account by the wrongdoer in a minute scrutiny of the expense as though they were his agents, for any mistake or miscalculation, provided they act honestly and reasonably."

That is a sentiment which I note Elizabeth Laing J repeated in this case. Whether or not the claimant mitigated its losses, a factual question, the duty to act reasonably in mitigating loss is not an exacting one.

In the *Thai Airways case*, Leggatt J referred to the responsibility of the court to approach the case with tenderness towards the injured party. So, mitigation is one thing and that is my direction to myself.

43. The second part of the calculation is to determine the extent of the loss which the claimant has suffered. This involves an assessment of what would have happened if the contract had been performed: undoubtedly there would have been payments of the guaranteed minimum sums; I also have to consider an analysis of the so-called September 2017 Forecast. I call it "the so-called forecast" because it is only partially a forecast. It contains historical data and it also acts as the particularisation of the damages claim. I then have to look at what has incurred de facto and what is likely to occur from now to the end of the contract term. There are two other discrete points concerning alleged overcharging and disposal of stock.

44. Mr. Stewart's primary case is that from virtually the outset, or at some later time, the claimant should have appointed new caterers and he suggests that they will do so in

the future. His secondary case is at paragraph 50 in his closing submissions so that if I am against him on his primary argument

> "…. the catering expert evidence is such that the assessment of damages should reasonably reflect the profits that ought reasonably to have been achieved and are reasonably capable of being achieved by the claimant over the entire term otherwise the claimant will be over-compensated and the basic principle of the claimant's losses being confined to those actually caused by the defendant would be infringed."

I wholly agree with that paragraph if I am against him on his primary case.

45. So should he have appointed new caterers? Gillingham FC has had two bad experiences with caterers. As a matter of common knowledge, many football companies do their own in-house catering. Once you employ catering contractors, you have no control over them without a guaranteed minimum revenue clause. They can allow the contract to run down if they are so minded. If you take the contract in-house, you have that control. You can decide how to push for more profits (or not) and you keep all the profits for yourself without a profit share.

46. I think Mr. Scally made his position very clear here. If he could have got a suitable guaranteed minimum revenue clause or some similar clause and some up-front premium, he would have seriously considered entering such a contract. Two caterers offered terms and we have looked at those terms in some detail in the course of the trial. Mr. Stewart, in particular, has analysed them. But I can see why those terms were wholly unattractive to Mr. Scally. He was cross-examined about his reasons. His statement had referred almost exclusively to the need for a guaranteed revenue clause. Under pressure from Mr. Stewart, he discussed the geography of the two potential caterers. It was not in his witness statement. He referred to the size of their operation and their reputation and so on. He also said that he had looked in some detail at what they were about, as Mr. Stewart put it "taking due diligence". None of this was in his statement and he was criticised for it. I was asked to determine whether he was being truthful about all of this or whether he was justifying himself with untruths retrospectively.

47. This may be a good point for me to assess Mr. Scally as a witness. Unkind submissions have been made about him. Indeed, a whole section of Mr. Stewart's final submissions was directed towards how I should treat the various witnesses. I am not interested in any of the other witnesses as to assessment save for the experts, but I am interested in Mr. Scally and I am interested in Mr. Dishington, about whom I have already made my views known.

48. I am entirely satisfied that Mr. Scally was in no way being dishonest in any way. Of course his evidence was undermined in part. He was subjected to fine, forensic cross-examination and so it is that on certain of the issues, such as the way to treat repairs and renewals in the documents, Mr. Scally's evidence will be rejected. It is the same with overcharging. Mr. Stewart had an encyclopaedic knowledge of the many hundreds of pages in the court bundles and although Mr. Scally had a very good knowledge about his own case, of course, there were documents that were brought to his attention which he had not previously taken on board or of which he had not

appreciated the significance. So Mr. Stewart was able to demonstrate that some of Mr. Scally's broader statements had been incorrect, but that is a far cry from his being found to be devious or dishonest.

49. An example perhaps comes from paragraph 34 of his witness statement at page 246 in bundle 2 where he had said that a particular provision had been inserted into the Agreement and had been added without the consultation or agreement of the club. It was put to him that this was effectively an allegation of fraud and did he want to withdraw it?

50. I can pause to say that part of the problem here with recollection of what had been going on is that Mr. Scally relied to some extent upon lieutenants to do some of the work, including for example Mr. Wood. Be that as it may, it was clear that the provision had not been surreptitiously slipped into the agreement. I have no doubt at all that when Mr. Scally wrote that and presented it as his evidence he believed it to be the truth. An email was produced to show that those changes had in fact been foreshadowed.

51. There were other examples such as the claims for repairs and renewals. Mr. Stewart was able to establish his point by referring to the documents. The short conclusion is that Mr. Scally was a witness of truth doing his best to help me, but occasionally having to acknowledge that he was wrong when documents were put to him. And occasionally ***not*** acknowledging that he was wrong when documents were put to him but where I will find him to have been wrong. The defendant's submissions about in-house catering can be summarised, to some extent. They relied upon the fact that the claimant had expressly said, in March 2015, that there was nobody in-house with any catering experience. Therefore, it is suggested that they should have gone to caterers.

52. Secondly, in some way it is said to be conclusive that the fact that a minimum guaranteed revenue and/or an upfront fee were the sole criteria in his witness statements and there had been some backtracking pointed to the fact that a caterer should have been appointed. It was said that the new evidence was "incredible". I do not find it to be so. Under scrutiny Mr. Scally expanded his answers. It happens all the time. It is firmly submitted that if the court were to find that Mr. Scally disregarded the contemporaneous proposals from the caterer because neither was prepared to offer a minimum guaranteed revenue and/or an upfront fee, this was unreasonable on the claimant's part and constituted an unreasonable failure to mitigate losses. I certainly do not share the defendant's jaundiced view and do not find it incredible that he should give it in more detail in the witness-box.

53. I accept his evidence on these points. I confess I find it difficult to understand how it can be said to be unreasonable. Why is a football club chairman not entitled to say, "I have a valuable facility. Before I appoint a caterer to come in and run that facility I would reasonably like them to pay a premium or to guarantee me some minimum return, otherwise I will take it on myself." That is the real world. It is the world in which 50% of football clubs operate. It was not an unreasonable failure to mitigate loss to take the operation in hand.

54. I take it a shade further. What is the real relevance of no in-house experience in 2015? This is an emergency created by this defendant who, it has to be remembered, was

denying liability, and counterclaiming that the boot was on the other foot. Mr. Stewart effectively conceded that in-house could be understood for the last few games of that season. Standing back, at the end of the season, Mr. Scally is able to make a choice either to appoint professional caterers or, as he chose to do, attempt to make a professional job of doing it in-house and acquiring the expertise. It is said by the defendant that the notional new contract from a caterer did not need to mimic the 2012 contract; that if the new caterers did not perform well so as to reduce the damages that they [the defendant] would clearly be responsible for a larger measure of damages; i.e. they would always have to pick up the shortfall.

55. Leaving aside that at the time they were still denying liability, I fail to understand why it was not equally open to the claimant to reach the conclusion that it could take it upon itself. At least one of the two tenderers wanted a management fee, and neither could give undertakings as to the profits they would make. That is my decision and in reaching it I have borne in mind those principles where a minute examination at the behest of the defaulting party should not be taken. Maybe I would have decided this issue differently if Mr. Scally had refused a contract with a caterer who came in and provided an MGR, even a reduced one. But they did not, and it was not available.

56. However, I have much more sympathy with the second limb of Mr. Stewart's argument. Whether this is truly a mitigation point or a straightforward causation point is open to some debate, but it matters not. The catering expert evidence is such that the assessment of damages should reflect the profits that ought reasonably to have been achieved and were reasonably capable of being achieved by the claimant over the entire term; to quote Mr Stewart, "otherwise the claimant will be overcompensated and the principle of the claimant's losses being confined to those actually caused by the defendant would be infringed".

57. It seems clear to me that the claimant has an ongoing responsibility to keep its operation under review, to see how it is doing, to institute changes and to use all best endeavours to achieve a reasonable return. It is clearly not open to them to say that they can charge it to the defendant's account if they continually -- for want of a better word -- underperform. I am going to be looking at this. There are various ways in which that can be done: controlling costs, improving marketing and generally assessing what it would take to achieve the sort of returns that reasonably could be achieved from this sort of catering operation.

58. I will of course need to say something about the catering expert evidence in due course, but first I need to look at the September 2017 forecast. This is in bundle 1 at pages 221 and 222. It follows the same template as that used by Lindley in the 2012 forecast. It has been subjected to some reasonable criticism for that, but it is criticism that I can take on board and deal with. It shows seven years, from the 2014-15 season to the end date of the contract in the 2020-21 season. 2014-15 is actual history and part assumption. It is part assumption because part of it falls within Centerplate's documents and part within the club. 2015-16 (which I will call Year 1) and 2016-17 (Year 2) are real figures. One can see there turnover figures of £789,000 and £1.06 million. The gross profits from sales are respectively £394,365 and £588,664. The labour costs are there at £366,000 and £460,000 for the two years. Then all the other costs are based on a small percentage basis, resulting in the net profit which is on the second page. It shows losses of £13,000, £296,000 and £41,000. Those are to date.

59. Thereafter it turns to forecast. One can see on the first page the forecast total sales for years three to six, rising from £1.2 million to £1.6 million. Reading through the document again in entirely the same way, it moves down to a catering loss of £10,600 next year and then moving into profit in 2018-19 so that by 2021 there will be a profit (so it is said by the claimant) of £83,000.

60. Taken over the whole of that period that results, as one can see from this document, in an overall loss of £187,364. That is an aid to the reality check. Effectively Mr. Stewart asked me to stand in the portals of Priestfield Stadium on the date that Centerplate walked out. What would be the expectation? Gillingham are going to take the operation back in-house and will operate in-house, (possibly later with caterers, who would know) until 2021. What Gillingham FC has lost are the guaranteed minimum revenues which come to £1.855 million. But standing there on the day of the repudiation, the expectation would be for the Club to make an overall profit between then and 2021; and the profit that would have to come back to Centerplate as a set-off. Gillingham FC are entitled to £1.855 million, less what it could make itself over those years.

61. The reality check is this. No-one would have expected that Gillingham would perform this contract for the next five or six years and lose an additional £187,000 to be added to the damages awarded against Centerplate. The further part of the reality check is this. Is it reasonable for Gillingham to turn up at court all these years later and say, "We have taken it back in-house; we have operated for all these years up to 2021; and our results over these years show that we have lost another £187,000"? That is my reality check. I remind myself, whether it be a duty or a simple causation point, that Gillingham FC, having taken this in-house, have to perform sensibly and professionally.

62. In broad terms the claimant says, "We are entitled to that £1.8 million odd, plus the additional £187,364." That was certainly their position at the start of the case. The defendant says, "You are entitled to that £1.8 million odd, but you have to give credit for the profit you should reasonably have made, and will reasonably make in the future." Having heard the evidence -- and particularly the evidence of the catering expert -- I am satisfied that any reasonable attempt at doing the catering at Gillingham Football Club over the next few years should produce a decent profit, or at least a profit of some sort.

63. The £187,000 loss. Now that the evidence has been heard, quite apart from that which I have just been talking about, that £187,000 loss requires a significant downward adjustment. It requires, as I hold, a downward adjustment of £184,234 in respect of renewal and repair costs, which I will explain later; a downward reduction of £26,003 -- i.e. the increased insurance costs incorrectly attributed to the catering operation -- and a downward reduction of £10,000 in respect of the licence fees incorrectly attributed to the catering operation. Those are three figures which fall away from this calculation. That wipes out the £187,000 immediately (and more).

64. The defendant's case is that when you have done those adjustments, and when you have taken account of other evidence which shows that they should reasonably have done better and that their past losses based on the test of reasonableness should be reduced, their future forecasts being woefully low, the true calculation will produce a

substantial profit for the period to 2021 which may then be subtracted from the £1.855 million to produce a much smaller final damages figure.

65. Mr. Stewart has attached three appendices to his final written submissions, which adopt the same format as the September 2017 document but which result in a profit of over £900,000 to be set against the £1.855 million. There are two stages to this operation. First, making the appropriate adjustments to the September forecast; those three matters which I have just considered. Secondly, thereafter making a much more sweeping adjustment to reflect what are said to be proper, reasonable results which could and should have been achieved by no more than a reasonable operation of the catering business. Whether this is put under the heading of failure to mitigate reasonably or just follows the ordinary causation of damages principles is really by the way.

66. Let me deal then with those reductions. The defendant excluded the repairs and renewals in 2015. Those can be seen on the September 2017 forecast under the year 2015-16 and there are very startlingly large amounts in costs immediately after disposables. I mentioned earlier in this judgment that the contract set out in its terms the obligations of the caterers and of the club. Following the departure of Centerplate, Gillingham spent those sums (totalling over £160,000) to refurbish the tea bars and the kiosks and to refurbish and rebrand the Blues Rock Cafe into The Factory

67. The contract made it very clear that repairs and renewals of that sort were club responsibilities, whoever should be the caterer. The club took the view that that refurbishment would assist them in their catering operation, and most certainly it has, but that cannot be put down to the defendant. This was a responsibility which they had in any event. It may well be that they would not have done those works if Centerplate had stayed; they would have required Centerplate to use the old facility; but that is really beside the point. It was their responsibility. It was demonstrated to be so on the contracts. I do not go to those now.

68. It is a very simple point and those immediately come off the bottom line. One should also delete the sum of £19,288 for what was said to be repair and cleaning costs, and factored into the September 2017 forecast. In my judgment, in any event, that was not adequately supported by the evidence. There was a concession made during the trial by Mr. Wood that the aggregate insurance costs should be removed, it now being accepted that there are no additional insurance costs to Gillingham Football Club consequent upon taking the catering in-house and removing the licence fees, which is also now an agreed matter. Those are all matters upon which I find for the defendant for those reasons.

69. I now move to stage 2. This is really effectively all done on profit margins. Mr. Stewart made a submission to me during the course of the case that the claimants had concentrated on the top line figures but that what really mattered were the bottom line figures. You improve your profit by, on the one hand, increasing turnover but, on the second hand, controlling costs and increasing your profit margin.

70. Let there be no doubt that insofar as Gillingham have managed to build up the turnover to where it is now they have done admirably well. If they manage to achieve the forecasts which they are anticipating for the next years, rising to £1.69 million -- as high as it has been since 2007 -- they will do remarkably well, in my judgment. But

the bottom line is also important and from the September 2017 document I can see that their anticipated profit margin on these projections is as little as 4.94% by 2021. I say "as little as" because I am satisfied that a catering operation of this sort, on the expert catering evidence, should produce significantly better profit margins.

71. I can move to the first appendix to Mr. Stewart's final submissions. It is an appendix which mimics the September 2017 forecast. Anybody considering this judgment should be looking at that document now. Total sales, catering profit and loss in the September 2017 forecast along the top lines are precisely taken from the September forecast. There have been adjusted profit margins moving down the page. For 2015-16 there is a recognition by the defendant that no adjustment has to be made, but for 2016-17 it is suggested that the claimant should have achieved a 5% profit margin which, as one can see, would have produced a profit of £53,000 as opposed to a loss of £41,000. In 2017-18 the profit margin, it is submitted, should be 10% producing a profit of £122,000 as opposed to a loss of £10,000. The profit margin then goes up to 15%, 20% and 20% producing substantial profits of £209,000, £307,000 and £338,000 as opposed to much more modest profits which the claimant contends for of £24,000, £52,000 and £83,000.

72. Thus, in the right-hand column, the defendant contends for a loss of £296,000 in the first year and then profits for the next five years resulting in an overall profit for the whole period of £734,000. To this must be added the three figures which I have already dealt with, meaning that one has over the period an overall profit of £955,000, which is then subtracted from the MGR producing a loss of £899,000 overall to which would be added the interest. If I were to follow that document in its entirety the award to the claimant would be £955,754.

73. Appendices 2 and 3 are identical to appendix 1, save for a submission that turnover should be improved by 15% per annum or by 30% per annum. So we are operating these documents on the top line and the bottom line. I can deal with the turnover uplift of 15% and 30% very speedily. In my judgment the claimants' suggested movement of the top line up to £1.6 million by 2021 is, if anything, generous to the defendant. In my judgment it will be difficult to achieve. Reality check number one; I factor in the 2012 forecast as corrected. Reality check number two; I factor in looking at the graph and the blue line anticipated increase in revenue by Centerplate, itself a catering company!

74. I note that in the first two years that Centerplate were in situ before they became Centerplate -- when it was Lindley -- and when they needed to try, and when Mr. Elliot was in charge of the contract, the graph moved along at a very modest level indeed. That is what professional caterers were capable of doing and it was what professional caterers were forecasting. It is, as it seems to me, rather difficult for Centerplate to suggest that what was not possible for them to achieve should be surpassed (as reasonable performance) by Gillingham, whether in house or by appointment of professional caterers.

75. There was an interesting submission in respect of what I can call the August 2015 solicitor's letter at the time that the parties were falling out. This is relied upon in the defendant's final submissions. "*A reasonably competent catering contractor could have achieved sales figures better than those in the 2012 forecast"* wrote the claimant's solicitors. *"A reasonably competent catering contractor could have*

conservatively achieved average gross sales of 7.5% per annum and significantly exceeded the aggregate sales revenue figure." Such were the claims made on behalf of the claimant.

76. This was seized upon by the defendant, who pleaded as follows:

> "It is denied that the claimant suffered any loss in circumstances where on its own case the claimant was acting as a reasonably competent contractor, or to achieve an aggregate profit in a sum which is at least equivalent to the minimum guaranteed revenue sum that was payable by the defendant."

77. The defendant has repeatedly harped on this letter to show that the claimant was saying that with reasonable competence the 2012 forecast could be achieved with ease. On the face of it, it is a good point. The claimant counters that this is really posturing, though that is my word.

78. A reality check again. It overlooks what Mr. Dishington told us; that Mr. Scally had delusions of grandeur to think that one could achieve a £2 million turnover. That was unobtainable. When I look at the Centerplate record, when they were trading as Lindley and no doubt attempting to maximise profits, the reality check hits home. I do not want to go back to the graph again.

79. It is a matter of obvious comment that the claimant wants to disown that letter and the defendant wants to seize on it. The defendant wants to disown what Mr. Dishington said about revenue increases and the claimant wants to use it. Essentially this argument rests upon the expert evidence. What is the proper profit margin? It is certainly significantly more than in the September 2017 forecast.

80. Professor Russell said a number of things upon which the defendant relies. Much of it was aimed at the benefits of caterers over in-house operators. He spoke of the ease with which one could achieve a 30% uplift with proper investment, and that it would have paid for itself within 18 months. I have been back through his evidence with care. I do not want to burden this judgment with a detailed critique and analysis. I was partly troubled by the fact that he had drawn, as I saw it to some not inconsiderable extent, on the evidence which was to be redacted and subject to colour coding. He paid a relatively short visit there. I am not convinced that he had a full and proper understanding of the nature of all aspects of the business.

81. Taking that expert evidence together with that on behalf of the claimant, I reiterate that Gillingham's attack on the top line has been impressive, and will continue to be impressive. If I have not already said so, I can dispose of Mr. Stewart's appendices 2 and 3 straight away and revert to his appendix 1. But I am prepared to hold that there should be an improvement in net profit, and I am impressed by the expert evidence that with proper attention and control better net profit rates should be achieved. I do not accept that rises over the next years of 5%, 10%, 15% and then 20% should be required to fulfil the test of reasonableness. It will certainly be a stepped increase, but I adopt a slightly different approach.

82. I do that, reminding myself that I am the jury and that I have all this information. I am going to adopt the format in appendix 1, but I am going to say this. For 2015-16 the

defendant's figures can be agreed because they do not quarrel with the claimant's figures. For 2016-17 I hold that the claimant should have broken even, so it is neither a £41,000 loss nor a £53,000 profit. It is a zero in all columns. I believe that it is reasonable for the claimant to have a target of 13% or thereabouts as a profit margin by the end of the period; a figure that was conceded really by Mr. Cookson. It will be hard to do, but it will be achievable and it will be by a stepped approach, moving from loss into good sustainable profit with a margin of 10% or more; perhaps 13% by the end of the period 2020-21.

83. Although it is a stepped approach, I am going to use a broad brush. I would apply a 9% profit to each of the years up to the final years of the contract. That means in 2017-18, 2018-19, 2019-20 and 2020-21 there should be a 9% uplift. I have made the calculation, which I am able to hand down to the parties now. Although not in exactly the same format -- because I could not reproduce it -- those are my figures. It results in an adjusted profit of £450,000 to be subtracted from the MGR. Standing back and looking at that, it seems to me that that is the correct figure. I appreciate, of course, that it will not be 9% over each year. It is a stepped approach, but I am adopting that broad brush. Standing back, that seems to me to be a sum which feels right.

84. There are a small number of additional discrete issues on damages. First of all, overcharging. This can be illustrated by the "Watch, Wine and Dine" facility. The background to this is that the club sells a composite ticket to a customer, who comes along to the ground, watches the game, is provided with a meal (with or without wine) and pays a ticket price for that. The caterer provides the meal and invoices the club for that which is owed to it.

85. There is a history of the prices charged by the caterers. The contract provides that the caterer will fix those prices, but in consultation with the club. But at the end of the day the caterer is entitled, having consulted, to charge the price that it wants subject only to the fact that it undertakes not to exceed some figure which is deemed to be uncompetitive, though there is no basis for defining the word “uncompetitive”.

86. It was the case on behalf of the claimant that they had been overcharged for this facility over two seasons, and indeed it was a running dispute. There were attempts to negotiate an agreement, a contra, which would accommodate both parties. But undoubtedly the price had gone up and it was the claimant's case that that had been put up unilaterally without any consultation. However, there had been consultation to the extent that an email had been sent to the club with the proposals. There had been no response to it, and as a consequence the new prices were charged. They were prices determined in accordance with the contract; they were properly charged and there has not been any overcharging.

87. The same applies to the other areas of overcharging. There is also a claim within the counterclaim for £47,971.38. That is agreed. It has been agreed all along that that is owed by the claimant to the defendant. It has been withheld, in my view quite properly, as a set-off. Then there is a claim for stock. This has not been really properly rehearsed, but I think it is clear on the evidence that in spite of taking everything it could when it left, the defendant did leave stock to the value of around £12,000. We have seen the stock record. Some of it was perishable. Some of it was in the freezer. Some of it was wet stock. Some of it was dry stock. The stadium manager was not there at the time and could not give any really helpful evidence

about it. In my judgment, some of that stock -- perhaps the beer, for example, or bottles of drink -- that were not cleared out would have been capable of being used by the claimant. I think something has to be awarded here

88. I noted that it had been the defendant's case that on the photographs some barrels that were there had been left with beer in. But it was clear, on examination of the photographs, that they were empty barrels. I would imagine that the beer stocks would have been run down in the run-up to this repudiation, for example, and perhaps other stock though there was, as I say, the stocktake. I have to pluck a figure out of the air. I think it is conceded by the parties that this is a matter of law -- the judicial fingertips -- and I award £4,000.

89. It may be that also in the claim there is a waste management figure of £251, which is agreed. If it is, so be it. So far as interest is concerned, I am going to say no more at this stage but this. I heard the dispute by the accountancy experts as to discount rates and interest. I am going to ask the parties to adopt the approach set out in paragraphs 3.26 to 3.30 of Mr. Lacey's report at bundle 5, page 2732. That is how interest and discount rates are to be calculated.

90. In summary, this judgment contains my findings and my awards. It contains the material whereby the calculations may all be done and I am going to ask the parties please, not necessarily today but over future time, to get together and see if they can agree a final order with a final number in the bottom line. I am also going to ask them if they can agree the total order that the court should make, including orders for costs.